

House of Representatives

Transcript of Proceedings

COMMITTEE ON THE POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE

Hearing on S. 1035 and H.R. 17760

18 June 1968

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C O N T E N T S

STATEMENT OF:

PAGE

Mr. Carl W. Clewlow,
Deputy Assistant Secretary of Defense
for Civilian Personnel Policy, Office
of Secretary of Defense;

107

accompanied by:

Mr. Frank Bartimo, Assistant General
Counsel for Manpower, Office of
Secretary of Defense.

HEARING ON BILLS S. 1035 AND H.R. 17760

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Tuesday, June 18, 1968

House of Representatives,

Committee on Post Office and
Civil Service,

Subcommittee on Manpower and
Civil Service,

Washington, D.C.

The Subcommittee reconvened at 10:10 o'clock a.m., in
Room B-374, Rayburn Building, the Honorable David N. Henderson
presiding.

Present: Representatives David N. Henderson (presiding),
Lee H. Hamilton, H. R. Gross, and James T. Broyhill.

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Mr. Henderson. The Subcommittee will come to order.

We began our public hearings relating to the protection
of rights and the invasion of privacy of civilian employees by
considering S. 1035 and H.R. 17760. Witnesses last week were
Chairman Macy, Commissioner Andolsek and Commissioner Hampton
of the Civil Service Commission.

Today we will hear from officials in the Department of
Defense, the largest employer in the Federal Government with
about one-half of the Federal employment in the Government. We

1 will be most interested today to learn of the impact of the
2 proposed legislation on manpower management operations in the
3 military departments.

4 We will complete the morning by holding an Executive
5 Session to discuss with officials of the National Security
6 Agency the impact of H.R. 17760 and S. 1035 on that Agency.
7 This session must be closed for the obvious reason of national
8 security.

9 Our first witness this morning will be Mr. Carl Clewlow,
10 Deputy Assistant Secretary of Defense for Civilian Personnel
11 Policy, accompanied by Mr. Frank A. Bartimo, Assistant General
12 Counsel for Manpower, Office of the Secretary of Defense.

13 Gentlemen, we will be glad to you have, if you will take
14 your seats at the witness stand, and if you have anyone accom-
15 panying you that you would like to have sit with you, we
16 would be delighted to have them.

17 I see you have a prepared statement. You may proceed,
18 sir.

19 STATEMENT OF MR. CARL W. CLEWLOW, DEPUTY ASSISTANT SECIE-
20 TARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY, OFFICE
21 OF SECRETARY OF DEFENSE; ACCOMPANIED BY MR. FRANK
22 BARTIMO, ASSISTANT GENERAL COUNSEL FOR MANPOWER, OFFICE
23 OF SECRETARY OF DEFENSE.

24 Mr. Clewlow. Thank you very much, Mr. Chairman.

25 I have, as you mentioned, with me Mr. Frank Bartimo,

1 Assistant General Counsel for Manpower for the Department of
2 Defense.

3 For purposes of the record, I am Carl W. Clewlow, Deputy
4 Assistant Secretary of Defense, Manpower and Reserve Affairs.

5 I welcome the opportunity to appear before this Committee
6 to present for your consideration the views of the Department
7 of Defense on S. 1035 and H.R. 17760.

8 The Department's interest in these bills is based on their
9 impact on personnel administration and on the national
10 security activities of the Department. As the Civil Service
11 Commission Chairman stated the adverse effect S. 1035 would have
12 on personnel administration, I shall address the major portion
13 of my remarks to matters of special concern to the Department
14 of Defense. To summarize quite quickly and quite succinctly
15 our position, the Department opposes the enactment of S. 1035.

16 This morning I would like to direct my remarks to four
17 basic areas:

18 (1) The Department's reasons why S. 1035 should not be
19 enacted in its present form.

20 (2) The Department's opposition to S. 1035 because of its
21 discriminatory provisions against military personnel performing
22 supervisory responsibilities.

23 (3) The additional sensitive activities of the Department
24 which should be included in the exemptions extended to the
25 Federal Bureau of Investigation, the Central Intelligence Agency

1 and the National Security Agency.

2 (4) The Department's initial reaction to H.R. 17760 is
3 favorable, but we would appreciate the opportunity to study it
4 closely. In fact, in anticipation of such a request, the
5 interested DOD components have been requested to submit com-
6 ments to the Department as soon as possible. We could have
7 specific comments to you within a few days thereafter.

8 With regard to the Defense Department's position on S. 1035,
9 in the 90th Congress, the Department filed a report with the
10 Senate Subcommittee on Constitutional Rights in which it con-
11 curred in the opposition report of the Civil Service Commission.
12 In addition, it noted that the bill did not take into account
13 national security considerations and that it applied unfairly
14 to military supervisors. To assist the Committee, I offer for
15 insertion in the record at this time a copy of the Department's
16 report of June 5, 1967 to the Senate Subcommittee.

17 While the bill, as passed by the Senate, meets certain
18 of the Department's objections, it continues to contain a num-
19 ber of provisions which would hamper the proper execution of
20 executive responsibilities. In order to be as brief as possible,
21 I will summarize the principal objections of the Department:

22 (1) The bills fail to distinguish between eligibility
23 for government employment in general, and the special responsi-
24 bilities of a national security nature entrusted to the Depart-
25 ment. The business of inhibiting espionage by careful selection

1 of persons to be given access to sensitive information is
2 extremely difficult at best. Without adequate information
3 concerning the background, affiliations, personal relationships,
4 mores, and financial and general integrity of persons con-
5 sidered for such access, it may well be impossible. It is
6 essential that, as the sensitivity of a position increases,
7 the Department must be permitted to broaden the scope of its
8 inquiries.

9 (2) The bill fails to provide the Secretary of Defense
10 with authority to exempt from its provisions certain sensitive
11 activities of the Department, despite the fact that those
12 activities involve access to classified defense information of
13 equal or greater import to national security than positions in
14 the agencies cited in section 6. The exemption authority granted
15 to the Central Intelligence Agency, National Security Agency
16 and the Federal Bureau of Investigation is based on a recognition
17 of the sensitivity of their missions, and for the same reasons,
18 should be extended to the Department of Defense when the
19 Secretary determines the national security so requires.

20 (3) The provisions permitting civil actions to be filed
21 in the United States District Court without claiming damages
22 or exhausting administrative remedies are disruptive to the
23 Department's grievance procedures and to employee-management
24 relationships. To permit disregard of the jurisdictional pre-
25 requisites to judicial review would most certainly encourage

the filing of spurious suits and open the door to broad and possibly organized harassment of executive actions.

(4) The provision authorizing the Board on Employees' Rights to reprimand, suspend or remove civilian violators is in derogation of the responsibilities of the employing agency and of the Civil Service Commission.

(5) The effectiveness of the employee organization system of representation established by E. O. 10988 would be seriously disrupted. Under section 4, an employee organization could join in a court suit at the employee's request, even though the organization does not represent the employees of that Defense activity. Under section 5, an employee organization could intervene in proceedings before the Board on Employees' Rights if "in any degree [it is] concerned with employment of the category in which any alleged violation of this act occurred." In this instance, it could intervene without regard to the wishes of the complaining employee.

To assist the Committee, I would like to identify a few examples of the types of operational problems the Department would face should S. 1035 be enacted in its present form.

The Department receives information that an employee has attended secret Communist Party meetings and that "outside parties or organizations" are instructing him on how to sabotage government facilities. Under section 1(b) an investigator's questions in these areas would be

1 unlawful. They constitute "notice" of his attendance
2 at a non-government meeting on a subject other than the
3 performance of his assigned official duties.

4 The Personnel Office receives information that an
5 employee is heavily in debt and that his failure to pay
6 his just and honorable debts reflects on the Federal
7 service. Under section 1(d) it cannot require the indi-
8 vidual to make a report, since his indebtedness does not
9 relate to his assigned official duties. It would also
10 be barred under section 1(i) since most employees, with
11 certain limited exceptions, may not be asked about their
12 financial liabilities.

13 The Security Office receives information that an
14 employee has come into unexpected wealth and that there
15 is reason to believe that the employee may have received
16 money from a foreign embassy. The employee is assigned
17 to critically sensitive duties involving information of
18 considerable value to foreign intelligence. Under section
19 1(i) the employee may not be required, or even requested,
20 to disclose the amount of or sources of his income,
21 property or other assets.

22 In addition, I offer the Department's report on S. 1035
23 of June 18, 1958 -- the report includes a ten-page sectional
24 analysis, and proposed amandatory language.

25 The Department concurs in the concept that, if S. 1035 is

1 enacted, it should apply to military officers who supervise
2 civilians in the same measure that it applies to civilian
3 supervisors. But under the terms of the bill, civilian super-
4 visors would not be subject to criminal charges, whereas the
5 Board on Employees' Rights could direct military authorities
6 to institute court martial action against a military supervisor.
7 In our view, this distinction in treatment is patently dis-
8 criminatory, if not constitutionally questionable.

9 Actually, an employee is not without remedy if he has
10 cause to believe that his military superior is committing a
11 wrong constituting a crime under the Uniform Code of Military
12 Justice. Under paragraph 29 of the Manual for Courts Martial,
13 1951, any person having knowledge of the offense may present
14 a violation of the act to duly constituted military authorities.

15 Certain sensitive activities of the Defense Department
16 should be exempted. As noted in my earlier remarks, we believe
17 that the same type of exemptions should be extended to the
18 other agencies of the Department concerned with intelligence
19 and national security matters as are extended to the FBI, CIA
20 and NSA. For example, the Department has a number of positions
21 requiring access to nuclear weapons and nuclear weapons systems,
22 chemical and biological warfare data, and operational war
23 plans. In addition, it has a number of intelligence elements
24 which deal with intelligence sources which are as sensitive
25 as those in the CIA, FBI and NSA. Obviously, CIA, NSA and FBI

1 information must be disseminated to selected personnel through-
2 out the Department of Defense. Consequently, any added
3 measure of personnel security by these agencies is wasted unless
4 it is matched within the Defense Department. We are concerned
5 that the Secretary of Defense be in a position to assure con-
6 sistency of Defense policy in this overall area and to apply
7 a like policy to all elements of the Department of Defense
8 engaged in similar activities.

9 It is my understanding that the Committee will receive
10 testimony from National Security Agency representatives in
11 Executive Session later today. At that time, classified activi-
12 ties will be discussed and a section-by-section analysis will
13 be made. Consequently, I will not elaborate further on the
14 critical nature of certain Departmental operations or on the
15 need to ensure the highest standards of trustworthiness and
16 integrity for those who man such posts.

17 Let us turn now to the Defense Department's position on
18 H.R. 17760. Here the Department considers it preferable to
19 S. 1035. It presents a set of balanced standards of rights and
20 obligations -- it vests responsibility for administration of
21 the Act where it belongs, in the employing agency and the Civil
22 Service Commission -- and it provides statutory protection to
23 Federal employees without prejudicing the proper performance
24 of Government operations. As to its specific provisions, the
25 enumerated "employee rights" are cast in general terms, and in

1 this respect may need clarification in order to provide meaning-
2 ful standards for both employer and employee. For example,
3 the bill declares that an employee has "the right to be pro-
4 tected against any unwarranted invasion of personal privacy."
5 It also enjoins supervisors to respect employee rights "con-
6 sistent with law and with the responsibilities of employment
7 in the public service."

8 A provision that is not included among the enumerated
9 "employee rights" is one pertaining to the political activities
10 of Federal employees. This fundamental right would seem to
11 deserve inclusion in the bill. We are pleased to learn from
12 reading the testimony that efforts will be made to take up
13 the legislation recommended by the Commission on Political
14 Activities of Government Personnel.

15 In conclusion, as the biggest single employer within the
16 Executive Branch, the Department is mindful of its responsi-
17 bilities to insure a proper balance between individual rights
18 and management objectives. The basic objective of S. 1035 is
19 laudable -- that respect for human dignity must be an essential
20 ingredient of the Federal Government's employment policies --
21 that its employees do not surrender their rights to respect from
22 their employer. But S. 1035 has not fully considered the
23 Government's interest and has created a system of remedies
24 which are cumbersome, contrary to well accepted tenets of
25 Government administration, and in some instances prejudicial to

1 the Department's mission.

2 In closing, may I express appreciation to the Chairman for
3 his efforts to bring forth a bill that will give proper balance
4 and recognition to the rights and responsibilities of both
5 management and its employees.

6 Mr. Henderson. Thank you, Mr. Clewlow.

7 Without objection, the Department of Defense report dated
8 June 17, 1968, and the other material referred to, will be
9 included in the record at this point, immediately following the
10 Secretary's testimony.

11 (THE MATERIAL FOLLOWS:)

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1 Mr. Henderson. Mr. Secretary, with regard to the Defense
2 activities that you have recommended be excluded from the
3 legislation as are CIA and NSA and FBI, would you care to
4 enumerate those by agencies, departments or activities? Or is
5 it your recommendation that the Secretary of Defense be given
6 the authority to exclude, if he finds the national security is
7 involved?

8 Mr. Clewlow. I believe this would be a proper responsi-
9 bility of the Secretary to do that. I would prefer to leave
10 it in that sense, sir.

11 Mr. Henderson. Could we gather from your testimony, where
12 you mentioned that matters involving the national security
13 coming to the Department of Defense from CIA or NSA and FBI
14 must be disseminated to selected personnel, that the Secretary
15 probably would exempt even certain personnel or officers under
16 that authority rather than to exempt an entire section or an
17 agency within the Department?

18 Mr. Clewlow. It was our thought that it would be on a
19 selected basis, depending upon the needs at the time, believing
20 that because the security provisions which govern the other
21 agencies do in fact protect this information, that the Secretary
22 of Defense would want to have both the authority and the
23 responsibility to offer an equal protection.

24 Mr. Henderson. With regard to your statement concerning
25 the employee rights pertaining to political activities, do you

1 mean by this that the bill should specifically state that the
2 Hatch Act provisions would be effective? Or do you make this
3 statement in connection with the recommendations of the Com-
4 mission on Political Activities of Government Personnel?

5 Mr. Clewlow. Our thought is basically that a governing
6 law like the Hatch Act might well be periodically reviewed, and
7 this might give an opportunity to review that and determine the
8 extent to which it may need to be recast or restated.

9 Mr. Henderson. Well, in the absence of the Subcommittee
10 considering the recommendations of that Commission in connection
11 with this legislation, would not the Hatch Act provisions apply
12 whether they were referred to in either of the bills or not?

13 Mr. Clewlow. Yes, they would.

14 Mr. Henderson. It was for that reason, in drafting my
15 bill, I did not refer to them, because I thought that that law
16 having been on the books for some time, we would all recognize
17 that that law is effective, whether referred to in the specific
18 legislation or not.

19 Mr. Clewlow. This is correct.

20 Mr. Henderson. Can you tell me to what extent psychological
21 tests are used in the Department of Defense?

22 Mr. Clewlow. I would like to ask our Assistant General
23 Counsel to address himself to that remark, if I may.

24 Mr. Bartimo. Mr. Chairman, as you know, in a sensitive
25 agency, for example, the National Security Agency, psychological

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1 testing is used. It is not used to that degree in other seg-
2 ments of Defense. In the very extreme, sensitive type operations,
3 for example, DIA, it may be used.

4 But I should emphasize where it is used, it is only used
5 as an aid for an overall judgment. A specific finding is never
6 made on a purely psychological test. It is merely an aid to
7 the psychologists or the psychiatrists who are trying to make
8 a judgment about the suitability of that individual getting
9 access to extremely sensitive Defense information.

10 Mr. Henderson. Is it a part of a medical exam that is
11 required in all instances?

12 Mr. Bartimo. If I may answer that specifically, it is not
13 in all instances. It is not in all instances. It is used with
14 great discretion. It is only used where, in the judgment of
15 the person responsible for the protection of that highly
16 sensitive compartmented type information, it is a necessary
17 vehicle, a necessary aid to make an overall judgment.

18 Mr. Henderson. To what extent is the polygraph used in
19 the Department of Defense?

20 Mr. Bartimo. Again, Mr. Chairman, the polygraph is used
21 with very, very close discretion, except in an agency like
22 the National Security Agency, again for the very reasons that
23 I have given referring to the psychological tests. The poly-
24 graph is not used as a magic tool or a magic box. It is used
25 under very stringent, carefully controlled criteria.

1 I would be glad to spell those out if the Committee desires.

2 And only -- and I want to emphasize "only" -- as an aid to
3 an overall judgment. Never is a judgment made on a polygraph
4 test in and of itself.

5 Mr. Henderson. Now, to be sure the record is clear and
6 in my own mind, are you saying that both the psychological
7 tests and the polygraph are only used in those areas where
8 national security is involved?

9 Mr. Bartimo. Only the most sensitive aspects of national
10 security.

11 Mr. Henderson. I believe, Mr. Secretary, that it would
12 be helpful if you could explain a little more in detail to what
13 extent the present policy is requiring financial disclosures,
14 both of military and civilian personnel in the Department of
15 Defense.

16 Mr. Clewlow. I will ask Mr. Bartimo to take this.

17 Mr. Bartimo. As you know, Mr. Chairman, the Department
18 of Defense has had in effect a Department of Defense regulation
19 that deals with the so-called conflict of interest. Under the
20 terms of that directive only certain personnel -- those politi-
21 cal appointees, those high-grade civilian personnel -- must,
22 under the terms of this directive, fill out a personal financial
23 statement. This statement in effect requires them to list
24 stocks and bonds and other securities, but only for the purpose
25 to determine whether that person might possibly have a conflict

1 of interest in the securities that he owns in relation to the
2 duties and responsibilities he fulfills for the United States
3 Government.

4 As you know, the Civil Service Commission has also issued
5 an overall Civil Service regulation which covers this same
6 field.

7 If you desire a specific figure as to the number of per-
8 sonnel that must submit these statements, I shall be glad to
9 submit it for the record. I don't have the figures with me.

10 Mr. Henderson. I think it would be helpful if you would
11 do that inasmuch as Mr. Macy gave those figures in his testimony
12 at the last session.

13 Mr. Gross. Mr. Chairman, at that point, would you yield?

14 Mr. Henderson. Yes, sir.

15 Mr. Gross. When the Comptroller General, then Mr. Campbell,
16 testified under oath before the McClellan Committee in the Senate
17 with respect to the F-111 contract -- taking another angle of
18 this disclosure business -- he testified before the Senate
19 Committee that even when his team from the Comptroller's office
20 went to McNamara to ascertain the figures and the information
21 upon which he based the award of the contract to General Dynamics
22 in Fort Worth, Texas, the Secretary of Defense told his team --
23 the Comptroller General's team -- that he was carrying the
24 figures in his head; and they were unable to get the figures.
25 They were unable to get the background information.

1 Now, how do you handle a situation of this kind, from
2 the standpoint of disclosure?

3 Mr. Bartimo. Mr. Gross, I am terribly sorry. I am not
4 too sure I catch your question. Could you spell it out a little
5 more clearly for me? I will attempt to answer if I can.

6 Mr. Gross. Well, how do you get the information from the
7 Secretary of Defense when he is carrying it around in his head
8 and refuses to disclose it?

9 Mr. Bartimo. Mr. Gross, my remarks, of course, were
10 addressed to the Chairman's question about conflict of interest --

11 Mr. Gross. How would we know if it was a conflict of
12 interest if we couldn't get the information to determine if
13 there was a conflict of interest?

14 Mr. Bartimo. May I say, sir, you are in an area in which
15 I am not an expert, nor am I familiar with the facts.

16 Mr. Gross. Well, at page 6 of your statement you say:
17 The Security Office receives information that an employee has
18 come into unexpected wealth and that there is reason to believe
19 that the employee may have received money from a foreign embassy."

20 Well, what about a procurement officer who may be suspected
21 of --

22 Mr. Henderson. I was going to ask, if the gentleman would
23 yield, if you would treat an officer the same as an employee?
24 Is your word "employee" here broad enough to cover all officers,
25 including procurement officers?

1 Mr. Bartimo. Yes, sir, it does. It would be broad enough.

2 If I may comment on the latter part, Mr. Gross, take the
3 hypothetical question you posed, that should a procurement
4 officer suddenly come into a great deal of wealth, and this
5 matter comes to our attention, there is no question at all that
6 we would immediately, under those circumstances, institute a
7 thorough investigation, and if we find any indication of con-
8 flict of interest, you can be assured that we would institute
9 the appropriate action, which might include a criminal prose-
10 cution.

11 Mr. Henderson. Are you saying that Section 1(i) of S. 1035
12 would prevent you from doing that, or inhibit you from making
13 that investigation?

14 Mr. Clewlow. The way we interpret that Section 1(i), we
15 may not require or request the employee to disclose the amount
16 of or source of income, property or other assets; and this
17 would mean, under S. 1035 --Mr. Bartimo may want to comment
18 more on that.

19 Mr. Henderson. What about the language "tending to indi-
20 cate a conflict of interest . . . to which he is or may be
21 assigned"?

22 Mr. Bartimo. I want to back up and reiterate my response
23 to Mr. Gross's question. What I have said is the way we would
24 react, and this undoubtedly would come to my office if it
25 came to that level. 'nd I can assure you, as a personal matter

1 that I would react precisely the way I have stated.

2 Now addressing myself to your phase of the question, we
3 are concerned -- and I am not certain that it was intended that
4 the language come out the way it did -- but if we had a case
5 of an individual who, if I may use a hypothetical case, who
6 suddenly came into a great deal of money and it was not related
7 to the task that he was performing for the Federal Government,
8 under this language -- and other lawyers other than myself have
9 construed it this way -- they conclude that we would be pro-
10 hibited from questioning that individual. And the example that
11 the Secretary gave here, of the individual who might have
12 gotten -- this is a far more dramatic example, I believe -- might
13 have gotten it from a foreign embassy; and yet, because that
14 individual was not charged with a similarity in function, that
15 is, his job did not relate to the type of activity he was en-
16 gaged in outside of his job, we could not question him.

17 And this, of course, we think is a very serious deficiency,
18 and I don't think it takes much imagination -- or even to review
19 some of the serious espionage cases we have had in this country --
20 to indicate that this would be a very serious deficiency in
21 fulfilling the responsibilities that the Secretary has.

22 Mr. Henderson. I think I understand the point you are
23 making. May I ask this question with regard to that section
24 of the bill then? You feel that where a clear conflict of
25 interest, such as would be illustrated by the contracting

1 officer or the purchasing officer, you would have authority
2 under the Ervin bill to go --

3 Mr. Bartimo. Yes, sir.

4 Mr. Henderson. But in the instance of where he might
5 come into money allegedly received from a foreign embassy,
6 would you think an amendment to the bill that would provide, or
7 tending to indicate that he had received money from some
8 source -- I don't know how to phrase this -- that would affect
9 his loyalty to the United States Government would cover the
10 instance of money from the foreign embassy?

11 Mr. Bartimo. May I give a hypothetical case that is
12 actually based on a true case? And when we get into executive
13 session, we can go into more details. But for purposes of the
14 record, let's take this case.

15 Take a GS-5 clerk who is working in a nonsensitive job,
16 but because he is in the position that he is in, he has a better
17 facility to get at classified information. Let's assume that
18 he is recruited by the Soviets with the idea that because he is
19 in that particular locale, he might be given access, or have
20 access, to this sensitive information. And they pay him a large
21 sum of money -- \$10,000, for example -- with the purpose of
22 performing espionage.

23 Now, under those circumstances, as we read this statute,
24 there is no conflict of interest. This man doesn't even make
25 out a conflict of interest statement under our regulations and

1 those of the Civil Service Commission. Under those circumstances,
2 the lawyers feel that this language would preclude us from
3 calling that man in and asking him details about this sudden
4 large sum of money that came into his possession. And this is
5 a real concern.

6 I do not know whether the committee intended that result;
7 but nevertheless we have circulated this particular act through-
8 out the Department, and the NSA lawyers and our own lawyers in
9 Defense tell us this is the construction that would be given
10 in the example that I have cited for you.

11 Mr. Henderson. Perhaps our problem is a problem that --
12 I could see how it would arise among lawyers, you and I being
13 one. And I think that we tend to perhaps restrict conflict of
14 interest in respect to performance of any of his official duties
15 to which he is or may be assigned -- maybe we are being too re-
16 strictive.

17 I think maybe what was intended here is that the term
18 "conflict of interest" be far broader than the type of conflict
19 of interest that we are normally familiar with; and perhaps
20 we can clear this up by clarifying language.

21 I will yield to the gentleman.

22 Mr. Gross. You seem to want to use the examples of those
23 who deal in security information with a foreign embassy. What
24 about the procurement officer who deals with a contractor, with
25 a defense contractor?

1 Mr. Bartimo. As I stated, Mr. Gross, we are as much
2 interested in the procurement officer that doesn't toe the
3 mark and perform as you and I believe he should. Any informa-
4 tion that indicates that this man might be in a conflict of
5 interest situation, that case is as important to us as the
6 case of possible espionage. We don't draw distinctions. All
7 these cases that come to our attention that need corrective
8 action, we never hesitate. We move as fast as the facts and
9 the circumstances warrant.

10 Mr. Henderson. I have one more question, and then I am
11 going to yield to my colleagues.

12 Mr. Secretary, you referred to the effectiveness of the
13 employee representation under Executive Order 10988 being
14 seriously disrupted. Do you believe that the legislation should
15 be carefully designed not to disrupt? And if you could tell
16 us how you envision it might be, it would be helpful.

17 Mr. Clewlow. There are prescribed procedures in support
18 of Executive Order 10988 which have to do with employee requests
19 and employee grievances. The provisions of Senate Bill 1035
20 would permit the circumvention, if you will, of administrative
21 regulations, and permit taking some of these matters into the
22 courts, sometimes even without the express approval of the
23 employee involved. It would permit employee organizations to
24 act unilaterally, without the approval of the employee himself.

25 Mr. Henderson. Would you recommend that where there are

1 employee and management agreements in effect providing for
2 grievance procedures, that those procedures have the effect of
3 law and control over and above provisions of this legislation?

4 Mr. Clewlow. I think I would like to give it some con-
5 sideration. I would like to submit an answer for the record on
6 that.

7 Mr. Henderson. It would seem to me this would be one way
8 that perhaps we could solve this problem, and it is a problem
9 for me, in that we are trying to legislate here, perhaps, a
10 procedure where there would not be an agreement between the
11 employee organizations and management in effect. Some of them
12 are within the Post Office Department. And it would seem to
13 me that where you have had vigorous, strong employee organiza-
14 tions that have over the years developed grievance procedures
15 that are satisfactory to them, we might provide that in those
16 instances where they are in effect, reduced to writing, and
17 understood between all the employees that those procedures
18 would control rather than what we would write into this legis-
19 lation.

20 That is all I have. Mr. Hamilton?

21 Mr. Hamilton. Just a question or two, Mr. Chairman, if
22 I may.

23 My understanding from your testimony so far is that you
24 feel that the national security would be very seriously jeopard-
25 ized by the passage of this bill.

1 Mr. Bartimo. Yes, sir.

2 Mr. Hamilton. As it now stands?

3 Mr. Bartimo. Yes, sir.

4 Mr. Hamilton. It would very seriously handicap the opera-
5 tions of the Defense Department in curtailing and stopping
6 espionage activities?

7 Mr. Bartimo. Yes, sir.

8 Mr. Hamilton. Now we have before us an analysis of the
9 bill by the Civil Service Commission, in which they have gone
10 down the various prohibitions of Section 1 and considered them
11 one by one, and either rendered an objection or no objection;
12 and in those instances where they have made an objection, they
13 have proposed an amendment.

14 Have you made that kind of an analysis of Section 1 of
15 the bill?

16 Mr. Bartimo. Yes, sir. I believe there is attached to
17 the Secretary's statement such an analysis.

18 Mr. Clewlow. About the final eight pages of the document,
19 I believe, sir.

20 Mr. Hamilton. Very good. That will be helpful, I think.

21 Mr. Henderson. In order that the record may be clear,
22 my unanimous consent request that the report be printed in the
23 record previously should include the section-by-section analysis
24 referred to.

25 Mr. Hamilton. Is the bill so bad to you that it is beyond

1 amendment?

2 I speak, for example, on page 4, where you say "the bill
3 fails to provide the Secretary of Defense with authority to
4 exempt from its provisions certain sensitive activities of
5 the Department." And you make some other suggestions in your
6 statement. But basically I have the impression that you think
7 the bill has so many defects in it that it is beyond amendment.

8 Mr. Bartimo. As you noticed, Mr. Hamilton, the Secretary
9 has submitted a report on the bill as passed in the Senate,
10 and that is attached also to this package, and this points out
11 some of the trouble, some areas that the Secretary of Defense
12 and all of us who must live with the bill are really concerned
13 about. You will hear more of this in the executive session.

14 But to address myself specifically to your question,
15 "is the bill so bad that it can't be amended" -- as a lawyer,
16 I would never say a bill could not be redrafted to meet what
17 we sincerely believe are defects.

18 I want to state from my own point of view as an attorney
19 that the objective of the bill is laudatory. We certainly be-
20 lieve that human dignity should be one of the keystones of
21 proper management of employees. On the other hand, as the
22 Secretary has pointed out, the vast responsibilities that fall
23 upon the sensitive agencies like NSA and Defense, CIA, should
24 be considered. It is a balancing, as the Secretary has pointed
25 out, of these very crucial and important factors.

1 I hope I have answered your question.

2 Mr. Hamilton. I don't know that you have, but I get the
3 impression that you are saying to me in a very nice manner that
4 we ought to throw the whole bill out and start over.

5 Mr. Bartimo. May we leave the record stand as it is, sir?

6 Mr. Gross. Will the gentleman yield at that point?

7 Mr. Hamilton. I have one other point. If this bill were
8 passed as it is, you would want to exempt every Defense Depart-
9 ment employee from it, or just those that have a sensitive
10 classification?

11 Mr. Bartimo. No, we would not want to exempt every
12 employee of the Department of Defense. As the Chairman stated,
13 we are the largest employer in the Executive Branch. But
14 within the Department of Defense we have some extremely sensi-
15 tive areas that you know about; for example, DIA, the Joint
16 Chiefs of Staff, the Secretary's immediate office. These people
17 have access to extremely delicate matters, and I think the
18 Secretary of Defense has the responsibility for fulfilling his
19 office, both because of the laws which the Congress has sub-
20 jected him to, but his duties in office to be certain that the
21 individuals chosen to have access to these matters which go to
22 the very heart of our national security are to be the type of
23 individual that all of you on this committee would want in
24 this job. This is a simple way of stating a very vast problem,
25 but I think it is accurate.

1 Mr. Henderson. In addition -- if the gentleman will
2 yield -- the way the bill treats the military officers is a con-
3 cern to you, separate and apart from the sensitive areas, I
4 believe, from your testimony.

5 Do you believe that the bill discriminates against a
6 military officer who might be in a civilian capacity because
7 he, upon recommendation of the board created, could be charged
8 with court martial; whereas the civilian supervisor would
9 otherwise be punished by the agency that he works for?

10 Mr. Bartimo. That is correct.

11 Mr. Hamilton. That is all, Mr. Chairman.

12 Mr. Henderson. Mr. Gross?

13 Mr. Gross. Well, Mr. Bartimo, you have expressed your
14 dissatisfaction with S. 1035. What about H.R. 17760?

15 Mr. Bartimo. I agree with what the Secretary has stated;
16 that we think it is a vast improvement. We think that the bill
17 is one which certainly, with the proper legislative history --
18 which we hope we are building now -- and with a more detailed
19 study and analysis, could become a very helpful tool for us in
20 the Executive Branch. As the Secretary stated, we haven't had
21 the opportunity to study this bill in depth the way we would
22 like to do on measures of this importance.

23 As the Secretary stated, we have asked all components within
24 the Department of Defense to study it and give us their comments
25 as soon as possible. And when those comments are received, with

1 the permission of the Chairman, we would like to submit them,
2 in order to be helpful, with the possible suggestion of some
3 clarifying language, or maybe some more detail in various
4 categories that are now broad.

5 We hope to be constructive and helpful. And I take it,
6 Mr. Chairman, that when these comments are ready, you would like
7 to receive them?

8 Mr. Henderson. Absolutely. And if the gentleman would
9 yield for a question in connection with this point --

10 Mr. Gross. Just one quick question, and then I will be
11 glad to yield.

12 Mr. Clewlow, do you think there is need for either S. 1035
13 or H. R. 17760?

14 Mr. Clewlow. I would say that we don't feel there is any-
15 thing that is necessary in S. 1035. If the Congress decides to
16 enact the statute, we think that the 17760 would be far better
17 than the other one; and we think it would provide the basis for
18 administering a fairly effective personnel program.

19 Mr. Gross. I will yield to the Chairman.

20 Mr. Henderson. I wanted to ask the counsel with regard
21 to the statement of the Secretary on page 9, referring to H.R.
22 17760, 'as to its specific provisions, the enumerated 'employee
23 rights' are cast in general terms, and in this respect may need
24 clarification in order to provide meaningful standards for both
25 employer and employee. For example, the bill declares that an

1 employee has "the right to be protected against any unwarranted
2 invasion of personal privacy."

3 Mr. Bartimo, it would seem to me that in the Senate bill,
4 in an attempt to enumerate and to specify the employee rights,
5 that it was an area in which we began to get into some trouble.
6 It also seems to me that the broad declaration of the House
7 bill obviously needs clarification. But would you prefer that
8 it be spelled out in the law? Or would you prefer the general
9 declaration that "the right to be protected against any unwarranted
10 invasion of personal privacy" be further explained by the ad-
11 ministrative regulations that would be the responsibility of
12 the Civil Service Commission, or perhaps through delegation to
13 your Department in those instances where it could not be
14 spelled out by administrative regulation?

15 Mr. Bartimo. Mr. Chairman, I believe you have stated our
16 judgment very well indeed. We prefer the guidelines that the
17 Congress would give to us, the principles, and we hope to
18 implement those principles in the spirit of the legislative
19 history that the Congress determines necessary. Then I think
20 it is better practice to have the Civil Service Commission, as
21 you have provided, implement those broad principles with regu-
22 lations, and in turn, as you might suggest, might even be dele-
23 gated to the Secretary of Defense for the issuance of regulations
24 which must be approved by the Civil Service Commission. And I
25 thoroughly subscribe to that method of procedure in this very

1 delicate and very important area.

2 What we meant by this statement -- this was because we did
3 not have sufficient time to analyze the wording. The very
4 wording, as you well know as an attorney, a word semantically
5 may mean something to you and myself, and it may mean something
6 different to others. Because there was a lack of legislative
7 history, we wanted to be certain that we furnished you the
8 best judgment we had, and this is the reason why we have asked
9 for these comments. We may come back with a suggestion of a
10 word change or a new phrase.

11 Mr. Henderson. As you review both the provisions of the
12 bill and your testimony, it would be very helpful to have any
13 specific comments that you feel would clarify. For example,
14 I might take just a minute -- if the gentleman would yield
15 further -- to emphasize, or to ask you to look at the word
16 "unwarranted." "Unwarranted invasion." This gave me a problem.
17 I would be satisfied in a sense to say "the right to be pro-
18 tected against any invasion of personal privacy," but by includ-
19 ing the word "unwarranted," I think we recognize there are
20 some instances where it is warranted to invade the privacy of
21 a federal employee. Is that what you are saying?

22 Mr. Bartimo. Yes, sir.

23 Mr. Henderson. Mr. Gross, thank you.

24 Mr. Gross. Mr. Clewlow, do you have any requirement for
25 present disclosure of stockholdings on the part of procurement.

1 officials?

2 I might again come back to the possible holdings in the
3 General Dynamics case, or Boeing stock.

4 Mr. Clewlow. At the time the person is employed, sir,
5 when he is employed in certain of the high positions -- and
6 quite a number of those pertaining to procurement -- he has to
7 file a disclosure statement concerning his own stock ownership.

8 Mr. Gross. At the time of his employment? How often is
9 this revised? How often do you require him to file a statement?

10 Mr. Clewlow. I can't speak from the regulations. I can
11 speak from personal experience. Having been with the government
12 for sixteen months, I had to file such a statement before coming
13 in, and I have had to file approximately one year after coming
14 in. So I know in the fifteen months I have been here I have
15 had to file two such statements. So I recognize that is the
16 same kind of requirement which is imposed upon persons in
17 positions at this level.

18 Mr. Gross. Well, does this same requirement apply to
19 military officers?

20 Mr. Clewlow. Yes, it does.

21 Mr. Gross. Who are involved in procurement?

22 Mr. Clewlow. Yes, it applies to many more, not even in-
23 volved in procurement, as well.

24 Mr. Gross. How about the immediate families of civilians
25 as well as military officers?

1 Mr. Clewlow. I would like to ask Mr. Bartimo. I don't
2 recall the regulations on that.

3 Mr. Bartimo. The regulations cover this area. With your
4 permission, sir, we would deem it a privilege if we might sub-
5 mit to you what we consider a detailed Department of Defense
6 regulation covering the areas of your very important questions
7 this morning. We would like to submit that for the record,
8 and if you have any questions after you read that, we would be
9 glad to attempt to respond, sir.

10 Mr. Henderson. Without objection, it will be received, and
11 whether it is included in the record or not can be decided by
12 the Committee and the staff as to its application to the bills
13 under consideration.

14 Mr. Broyhill. Mr. Chairman, while we are talking about
15 submitting additional information for the record, the Department
16 of Defense witnesses this morning are also basing their objec-
17 tions to this legislation on the fact that they have very
18 exhaustive administrative remedies, or a very excellent grievance
19 procedure, as I understand it. I think we should have some
20 explanation of this grievance procedure as to whether it is a
21 uniform procedure for the whole Department, or whether the
22 various agencies under the Department have different procedures.

23 Mr. Clewlow. I would like to submit something for your
24 review and have you determine the extent to which you want it
25 made part of the record.

1 Mr. Henderson. I think it might be well for you to make
2 comments with regard to the new grievance procedures that the
3 Civil Service Commission has promulgated.

4 Mr. Clewlow. Right.

5 Mr. Henderson. Mr. Broyhill?

6 Mr. Broyhill. That is all I have.

7 Mr. Hamilton. Mr. Chairman, I just want to clarify, if I
8 can, in my own mind your attitude towards H.R. 17760. I under-
9 stand you have not had an opportunity to go into it in great
10 detail; but in general, are we better off with it or without
11 it, this type of bill? Is it a piece of legislation you are
12 advocating?

13 Mr. Bartimo. If I may, let me give you a complete response.
14 As a lawyer sitting in the Office of the Secretary of Defense
15 where I describe my job as having a front seat on what goes on
16 in the world, I believe that hearings such as the Senate hearings
17 are very helpful. I believe that this hearing is very helpful.
18 I think it is always helpful to have somebody take a look at how
19 we are operating under the statutes.

20 Our initial reaction -- and I want to try to be as responsive
21 as possible -- is that this bill, 17760, is a much more con-
22 structive and wholesome tool, properly implemented, with the
23 proper legislative history, than is S. 1035. That is our
24 initial reaction. So that, as the Secretary has pointed out
25 and as we have testified this morning, we look upon this vehicle

as a favorable device.

We would like to caveat that statement by saying, "let us have the experts who have to live with such a law take a look at it," which they are now doing. Once they come up with their constructive observations, perhaps we can find ways of improving this bill; improving it so that not only the Congress will be satisfied that we are upholding human dignity as we should, so that way down the line somebody is not getting the word, and also that the managers who have a responsibility to you, to us, will properly have the right tool to work with.

In other words, what we are saying, we think this is so important an area where you are dealing with human dignity, the very soul of an individual, that we should give it very deliberate and very detailed consideration with the proper impetus not only on the Executive Branch, but I am sure on your part as well.

Mr. Gross. Mr. Chairman, I have one other question.

You have areas in the Department of Defense where you must have security, and you have areas where any rule or law or regulation should not apply. In other words, you have security areas and nonsecurity areas, do you not?

Mr. Clewlow. We have varying levels of sensitivity. We like to think that we have secure arrangements for all of them, but some require varying degrees or varying priorities of security.

1 Mr. Gross. You say all areas, all divisions and areas in
2 the Department of Defense are subject to security; is this
3 correct? Security regulations and withholding of information
4 on that basis?

5 Mr. Clewlow. Not the withholding of information on that
6 basis. Let me try to answer it a little more specifically by
7 saying we have certain positions throughout the Department of
8 Defense which we regard as sensitive positions; and then we
9 have some of those which, in addition to being sensitive, are
10 sensitive critical. That is what I mean by varying degrees
11 or varying priorities of security requirements. There may be
12 some kinds of activities which require no national security --
13 which have no national security implications as we are discuss-
14 ing them now. There may be others which would have to be highly
15 restricted.

16 For example, in the Department of Defense, probably 500,000
17 or more of the positions are what we term sensitive positions. In
18 our Departmental employment of 1,300,000, this would mean there
19 are 800,000 not in the sensitive area about which you ask.
20 Within that 500,000 there are probably something in the nature
21 of 36,000 to 40,000 that are sensitive critical, a criticality
22 above that first level which would require even more sensitive
23 means of administration. This is the thing I am trying to say,
24 sir.

25 Mr. Gross. What I am trying to get at, as you may suspect,

1 is that if it were possible to do so, it would be good to have
2 a list of sensitive areas in the Department of Defense, and a
3 list of the nonsensitive; that is, people on a sort of before-
4 the-fact basis.

5 Now, I have had my troubles, and I am sure other Members
6 of Congress have, too, in getting information. I had it with
7 respect to this TFX-F111 deal. In the early stages of this,
8 a cloak of security was wrapped around it, and I couldn't get
9 certain information with respect to this deal. I ran into it
10 in NASA -- you are not concerned with this -- with respect to
11 the Apollo disaster in the early stages of it. Newspaper
12 people can well testify that it was hard to get any information
13 in the early stages of the Apollo disaster. Why, I don't know.
14 But if we could have certain areas listed as being non-national
15 security areas, it would be most helpful. It would be to me,
16 so that I wouldn't be confronted with this security lid when
17 I went after information in those areas, and other Members of
18 Congress, or other citizens.

19 Mr. Clewlow. I should like to suggest that we explore with
20 your staff --

21 Mr. Gross. I am trying to say you hide behind this cloak
22 of secrecy and security at every opportunity, not only in the
23 Department of Defense, but in other areas of government, and I
24 say when it is not justified.

25 But excuse me for interrupting.

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142

1 Mr. Henderson. Mr. Secretary, you were going to suggest --
2 and I think it would be well -- that you might work with our
3 staff to see if you could furnish us this information; and I
4 think it could be helpful to us.

5 Mr. Secretary, and Mr. Bartimo, now I am referring to a
6 notice from the Department of the Army, Sacramento Army Depot,
7 Civilian Personnel Information 68-4, dated 17 May 1968, to
8 All Employees. And I will make a copy of this available to you
9 for a greater response if it becomes necessary. But this is
10 pertaining to the use of the Employee Service Record Card.

11 "Employee Service Record Card (previously known as WD Form
12 80 or OF4B card) is used by the supervisor to record important
13 information about his employees. It shows such information as
14 position title, grade, pay, promotions, length of service,
15 tenure status, physical handicaps, age, skills, training,
16 education, and performance appraisals. These are things a
17 supervisor has to know to properly evaluate the progress of
18 individuals and to make decisions on proper courses of action.
19 There are too many things to remember; therefore a record that
20 is easily accessible to the supervisor is a must.

21 "(b). The supervisor may also enter records of incidents
22 such as tardiness, errors, outstanding jobs done, verbal warn-
23 ings, et cetera. These are necessary for the supervisor to
24 review in annual performance appraisals, discussions with the
25 employee, and evaluation of habit patterns. No one can be

1 expected to remember everything that happens with a group over
2 a period of time.

3 "(c). Since the service record card is the supervisor's
4 record, employees are not entitled to look at it. Supervisors
5 may ask the employee to review the card and initial entries.
6 However, this is at the supervisor's discretion. Likewise,
7 whether the employee initials or not is at his discretion. The
8 card, in any event, cannot be used in itself to support either
9 an official disciplinary action, an award or a promotion."

10 This is the first section, and I won't go into the second
11 section, which refers to sick leave and other items.

12 What is your feeling about supervisors making these records
13 and it being within the discretion of the supervisor as to
14 whether it goes to the employee? We are talking about an
15 employee's right of privacy. Does the supervisor have this
16 right of privacy to make notes, in your opinion, about the
17 performance of his employees, and have the discretion whether
18 he would reveal that to the employee?

19 Mr. Clewlow. I am not familiar with that form to which
20 you refer.

21 With regard to the question which you have asked at the
22 end of that, I believe that the supervisor has a responsibility
23 to make periodic appraisals; whether he keeps them in his own
24 mind or whether he records them would be a matter of how he in
25 fact would administer his job of supervisor.

1 If he provides long written comments which might, in
2 improper circumstances, be judged inimical to the interests of
3 the employee, this may be another matter which would have to
4 be examined. I don't know.

5 Mr. Henderson. From time to time the Committee and the
6 staff have had suggestions from employee organizations that
7 anything that is written down about the employee ought to be
8 revealed to the employee, and here is just an illustration.
9 This seems to me to be a fairly reasonable type of system; but
10 I thought it was interesting in that it shows the other side
11 of a picture; that you have got a supervisor's record, and his
12 right to keep such notations as he makes about his employees
13 confidential if he wants to.

14 I will ask the staff to make a full copy of this and present
15 it to you.

16 Mr. Clewlow. We would like to examine it.

17 Mr. Henderson. It may be well for the Department to give
18 us your comments with regard to this, and how the legislation
19 before us might affect supervisors in the performance of this
20 type of responsibility.

21 Now, lastly, as far as I am concerned, do you think that
22 the military supervisors -- these are enlisted men or officers --
23 who are supervising civilian workers should be included in the
24 legislation? And you have already said not to the extent of
25 S. 1035. But if they are in supervisor capacities, do you think

1 that the legislation ought to apply to them? Should they be
2 exempted? Or are you saying that they ought not to have greater
3 responsibility or greater punishment than would fall on an
4 ordinary civilian supervisor?

5 Mr. Clewlow. We would like to get more specific responses
6 from our components so we know the extent covered. We would
7 like to be able to respond to that in our comments to you.

8 Mr. Henderson. If there are no other questions, then the
9 Subcommittee will go into Executive Session to hear from the
10 National Security Administration witnesses who are here; and
11 I think it would be helpful to the Subcommittee if you gentlemen
12 in the Department of Defense would remain for that session.

13 (Whereupon, at 11:15 o'clock p.m., the Subcommittee
14 proceeded in Executive Session.)
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Reg:
Pls put with
your S. 1035
file RBLS